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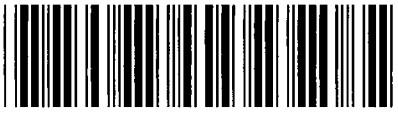

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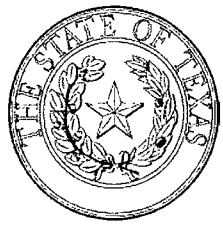

State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

September 3, 2020

TO: **Stephen Journeay, Commission Counsel**
Commission Advising and Docket Management
William B. Travis State Office Building
1701 N. Congress, 7th Floor
Austin, Texas 78701

VIA EFILE TEXAS

RE: **SOAH Docket No. 473-20-2278**
PUC Docket No. 50277

Application of El Paso Electric Company to Amend Its Certificate of Convenience and Necessity for Additional Generating Unit at the Newman Generating Station in El Paso County and the City of El Paso

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. The jurisdictional deadline is November 23, 2020, however, EPE seeks CCN approval no later than September 30, 2020, as discussed on page 6 of the PFD. Please notify us and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Sincerely,

Christiaan Siano
Administrative Law Judge

Robert H Pemberton
Administrative Law Judge

xc: All Parties of Record

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SOAH DOCKET NO. 473-20-2278
PUC DOCKET NO. 50277

APPLICATION OF EL PASO ELECTRIC COMPANY TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR AN ADDITIONAL GENERATING UNIT AT THE NEWMAN GENERATING STATION IN EL PASO COUNTY AND THE CITY OF EL PASO	§	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

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PROPOSAL FOR DECISION

I. INTRODUCTION

El Paso Electric Company (EPE) filed an application (the Application) requesting that the Public Utility Commission of Texas (Commission) amend its certificate of convenience and necessity (CCN) to authorize it to construct, own, and operate a new 228-megawatt (MW) natural-gas-fired generating unit. EPE proposes to construct this new generating unit, known as Newman Unit 6, at its existing Newman Generating Station in the City of El Paso. EPE has estimated the total cost of constructing and interconnecting Newman Unit 6 to be approximately $160 million.

EPE asserts that Newman Unit 6 is needed to replace older generating units, serve anticipated increases in customer demand, and help EPE meet its planning reserve margin. EPE selected Newman Unit 6 as a principal component of a portfolio of new resource acquisitions that were selected through a competitive-bidding process. EPE seeks to have Newman Unit 6 in service in time for the 2023 summer peak season.

Only the City of El Paso (City) opposes the Application. While faulting little of EPE's "original decision making,"[1] the City insists that more recent events—particularly the disruptive effects of the COVID-19 pandemic—have created material uncertainties regarding the accuracy

[1] City Reply Br at 11-12.

of the demand forecasts on which EPE's asserted need for Newman Unit 6 was based. The City maintains that it is imprudent for EPE to "go full steam ahead [with Newman Unit 6] as if there had been no change in the country or economy since it did its forecasts,"[2] and that instead EPE should postpone such a substantial investment until the ramifications for EPE's long-term demand can be better understood. Until then, the City reasons, EPE would more prudently meet its resource needs through alternative means that include postponing planned retirements of older generation units. The City further contends that EPE has overstated its resource needs by failing to properly account for capacity that its solar purchased-power agreements (PPAs) will contribute to its system. Finally, the City faults EPE for failing to consider the implications of the 2019 New Mexico Energy Transition Act (NMETA) with respect to both the prudence of Newman Unit 6 and cost-recovery implications for EPE's Texas ratepayers.

Although concerned by the disruptive effects of COVID-19, the Administrative Law Judges (ALJs) recommend that the Commission grant EPE's application.

II. JURISDICTION, NOTICE, SUFFICIENCY, AND PROCEDURAL HISTORY

The Commission has jurisdiction over the Application pursuant to the Public Utility Regulatory Act (PURA)[3] §§ 14.001, 14.002, 37.051, 37.053, and 37.056. The State Office of Administrative Hearings (SOAH) has jurisdiction to conduct a hearing on the merits and to prepare a Proposal for Decision (PFD) pursuant to PURA § 14.053 and Texas Government Code §§ 2001.058 and 2003.049. Jurisdiction is not contested.

EPE filed the Application with the Commission on November 22, 2019.[4] On January 8, 2020, the Commission's ALJ found both the Application and notice sufficient. Because

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[2] *Id.* at 4.

[3] Tex. Util. Code §§ 11.001-66.016 (PURA).

[4] EPE Ex 1, Application

those issues have not been contested, they are set out in the findings of fact and conclusions of law without further discussion.

The Commission referred the matter to SOAH on January 27, 2020. The City, Texas Industrial Energy Consumers (TIEC) and the Office of Public Utility Counsel (OPUC) intervened, as did two parties—the Hoppy Monk and Sandra Foster—who were subsequently dismissed for failure to participate. EPE, Staff, and the City filed testimony, and OPUC and TIEC filed statements of position. Staff and OPUC support the Application, and TIEC is unopposed.

The hearing on the merits commenced on June 9, 2020, and concluded the same day. On the City's motion, it was permitted to file one exhibit on June 10, 2020, which was admitted through SOAH Order No. 6. Parties filed initial briefs on June 23, 2020, and reply briefs on July 7, 2020. The record closed with the July 7, 2020 filing of reply briefs.

III. OVERVIEW OF THE PROPOSED NEW SERVICE

A. Description of Newman Unit 6

EPE plans to construct Newman Unit 6 at its existing Newman Generating Station in El Paso County, Texas, and the City of El Paso.[5] The proposed plant is a Mitsubishi Hitachi Power Systems Americas (MHPSA) G-Series Air-Cooled natural-gas-fired combustion turbine.[6] The plant's International Organization for Standardization rating is 283 MW, and Newman Unit 6's nameplate rating is approximately 228 MW based on the Newman Generating Station location and EPE's peak conditions.[7] Newman Unit 6's power will be delivered directly to EPE's transmission system.[8]

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[5] EPE Ex. 8 at 3 (Bates 5) (Hawkins Dir.)

[6] *Id*

[7] *Id* at 3 (Bates 5), 11 (Bates 13)

[8] *Id* at 3 (Bates 5).

The plant will have a starting reliability of 99.05 percent and a forced outage rate of 0.48 percent.[9] Evaporative coolers will cool the combustion turbine-inlet air for maximum operating efficiency.[10] The guaranteed full load heat rate under peak load conditions is 10,101 British Thermal Units/kilowatt-hour (Btu/kWh).[11] Newman Unit 6 will deliver approximately 228 MW with a minimum expected simple-cycle thermal efficiency of 37.4 percent.[12] All natural gas supplies for Newman Unit 6 will come through the existing El Paso Natural Gas pipeline or, if needed for reliability or potential fuel savings, through the existing ONEOK Westex pipeline.[13]

Newman Unit 6 will be capable of being started and shut down quickly on a daily basis.[14] It will have two start-up modes: (1) quick start, where 50 percent load is reached in eight minutes and 100 percent load in under twelve minutes, or (2) regular start-up, where the unit can come online in 20 minutes and achieve full load capability in 35 minutes.[15] The unit can be ramped up and down as needed without negatively impacting maintenance costs.[16]

EPE plans to operate Newman Unit 6 to meet peaking and load-following requirements, using it mostly during peak hours while also being able to use it to provide reliability support to the system during non-peak hours, and it can be economically dispatched to supplant more

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[9] *Id* at 6 (Bates 8).

[10] *Id.*

[11] *Id* The guaranteed heat rate reflects the contracted heat rate such that if the 10,101 Btu/kWh heat is exceeded, then the manufacturer must provide compensation to EPE. *See id* at 6 (Bates 8), n 5

[12] *Id* at 8 (Bates 10). Thermal efficiency is the ratio of the generator's useful energy produced to the heat input *Id* at 8 (Bates 10), n 6

[13] *Id* at 4 (Bates 6).

[14] *Id* at 4-5 (Bates 6-7).

[15] *Id*

[16] *Id* at 5 (Bates 7).

expensive generation.[17] EPE's peaks occur during the summer, experiencing significantly higher load during the day between the months of May to September than at other times of the year.[18] The unit's peaking and load-following ability will also assist EPE in responding to the intermittent nature of solar generation.[19] Newman Unit 6 is expected to operate at about a 35-percent capacity factor.[20]

Newman Unit 6's daily cycling capabilities will allow EPE to improve efficiency in meeting daily customer load fluctuations and its summertime peak demand.[21] In addition, Newman Unit 6 will help meet winter and shoulder month demand when output from solar resources is less available.[22] The unit would also allow EPE to ramp up or shut down based on load or economic conditions.[23]

Further, locating the unit within EPE's service territory will enhance overall service reliability by providing voltage support within EPE's load area and will reduce the risk of outages due to transmission failure.[24]

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[17] *Id* at 4-5, 7 (Bates 6-7, 9) Peaking operation describes the unit's operation at meeting high-demand periods at maximum output for a short number of hours in the day, while load-following (or intermediate) operation can be described as operating the unit for longer hours to balance out the variability of load. *Id* at 8 (Bates 10).

[18] EPE Ex 7 at 7-8 (Bates 9-10) (Novela Dir.).

[19] EPE Ex. 8 at 8 (Bates 10) (Hawkins Dir.).

[20] *Id* at 7 (Bates 9)

[21] *Id* at 5 (Bates 7).

[22] *Id*

[23] *Id* at 7 (Bates 9).

[24] *Id.* at 5 (Bates 7).

B. Proposed Date of Commercial Operation

Newman Unit 6 is scheduled to be in service by May 2023[25] to be available to meet EPE's summertime peak loads and replace capacity that would previously have been provided by three generating units currently scheduled to be retired in December 2022.[26] To achieve the scheduled in-service date and begin construction by July 2021, EPE seeks CCN approval no later than September 30, 2020.[27] According to EPE, approval after that date will impact the guaranteed delivery date of key construction equipment; delays in delivery of equipment jeopardize the scheduled in-service date of the unit.[28]

C. Estimated Costs

The cash construction cost for Newman Unit 6 was estimated to be approximately $141.2 million, excluding allowance for funds used during construction (AFUDC), which is estimated at $16.4 million, and interconnection costs, which were estimated at $1.2 million.[29] EPE estimates these interconnection costs to be $1.5 million, which represents the cost of the tie-in to EPE's transmission system through a new substation that EPE has identified as necessary.[30] The $141.2 million included estimated facility costs on the site of the existing Newman substation of $3.1 million, as well as $5 million as a contingency.[31] EPE expects those costs to be approximately $7 million for the new substation and $0.6 million for interconnecting Newman Unit 6 to the point of interconnection at the substation site.[32] EPE's Power Generation Department confirmed the

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[25] *Id* at 9 (Bates 11).

[26] EPE Ex. 4 at 11-12 (Bates 14-15) (Gallegos Dir.).

[27] EPE Ex. 8 at 9 (Bates 11), Exh. DCH-2 at Bates 20 (Hawkins Dir.).

[28] *Id* at 9 (Bates 11).

[29] EPE Ex. 8 at 10, 13 (Bates 12, 15) (Hawkins Dir.); EPE Ex. 3 at 12 (Bates 14), Exh. JS-1 (Bates 18) (Schichtl Dir.)

[30] Staff Ex. 9 at Bates 19 (EPE Resp. to City Request for Information (RFI) No 3-15).

[31] EPE Ex. 8 at 10 (Bates 12) (Hawkins Dir.).

[32] Staff Ex. 9 at Bates 19 (EPE Resp to City RFI No. 3-15)

$141.2-million cash capital-cost estimate for Newman Unit 6 that was presented as a proposal in the competitive bidding process.[33] The operation and maintenance (O&M) costs for Newman Unit 6 are estimated to be $4.8 million of annualized maintenance cycle costs in 2019 dollars.[34]

Newman Unit 6's proposed cost of $620/kilowatt (kW) reflects the impact of the high ambient temperature and elevation in El Paso compared to other areas of the country.[35] At sea level, the same unit would cost approximately $499/kW, because the rated capacity would be 283 MW instead of the 227.8 MW in El Paso.[36]

D. Direct Effects to Land Not Owned by EPE

Newman Unit 6 will be located within the fenced boundary of the existing Newman Generating Station, which already contains Newman Units 1-5, as well as numerous above-ground storage tanks, a 40-acre evaporation pond, transmission infrastructure, and an electrical substation.[37] EPE leases approximately 540 acres of land surrounding the Newman Generating Station from the El Paso Water Utilities Public Service Board, providing a buffer zone that extends a minimum of 1,200 feet in each direction.[38] The topography of the adjacent land is relatively flat to gently rolling, consisting mostly of undeveloped open lands zoned as Ranch Farmland, Heavy Manufacturing, and Quarry.[39]

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[33] EPE Ex. 8 at 10 (Bates 12) (Hawkins Dir.).

[34] *Id* at 10 (Bates 12), Exh DCH-4 at 1 (Bates 22).

[35] *Id* at 10-11 (Bates 12-13).

[36] *Id* at 10 (Bates 12).

[37] EPE Ex. 9 at 5, 7 (Bates 7, 9) (Christianson Dir.).

[38] *Id* at 7-8 (Bates 9-10)

[39] *Id* at 8 (Bates 10).

The area immediately to the south/southeast of the Newman Generating Station contains a 10-MW solar generating plant that is contractually operated for EPE.[40]

No easement or other property interest would be obtained over all or any part of any land not owned by EPE through the granting of the CCN amendment sought by the Application.[41] Therefore, no land not owned by EPE will be "directly affected" as defined under 16 Texas Administrative Code (TAC) § 22.52(a)(3).

E. Other Regulatory Approvals

EPE has filed a Certificate of Public Convenience and Necessity (CPCN) application with the New Mexico Public Regulatory Commission (New Mexico Commission) to construct and operate Newman Unit 6.[42] That proceeding was scheduled for a hearing on the merits in July 2020.[43]

EPE is performing the studies required by its Open Access Transmission Tariff (OATT) for the interconnection of the proposed Newman Unit 6 on its system, which was filed at the Federal Energy Regulatory Commission (FERC).[44] Under the Large Generator Interconnection Procedures, the Newman Unit 6 generator is being studied under a cluster with other generators in the EPE Interconnection Queue, including a System Impact Study and a Facility Study.[45] Further, EPE submitted a completed Interconnection Request which was placed in EPE's Generator Interconnect Request queue.[46]

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[40] *Id* at 8 (Bates 10), Exhs JC-2 at 1 (Bates 55), JC-3 at 1 (Bates 56).

[41] *See id* at 9 (Bates 11).

[42] EPE Ex. 3 at 5 (Bates 7) (Schichtl Dir.); EPE Ex 4 at 35 (Bates 38) (Gallegos Dir).

[43] EPE Ex. 12 at 6 (Bates 8) (Schichtl Reb)

[44] EPE Ex 8 at 12-13 (Bates 14-15) (Hawkins Dir.).

[45] *Id* at 13 (Bates 15)

[46] *Id*

EPE states that it has not made any specific commitments in its request for CPCN approval from the New Mexico Commission. At this time, EPE has not determined whether it will proceed with construction of Newman Unit 6 if its New Mexico application is denied.

IV. DISCUSSION

A. Legal Standard for Certification

The Commission may grant or amend a CCN only upon finding that the certificate "is necessary for the service, accommodation, convenience, or safety of the public."[47] When making this determination, the Commission must consider:

(1) the adequacy of existing service;
(2) the need for additional service;
(3) the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and
(4) other factors, such as:
  (A) community values;
  (B) recreational and park areas;
  (C) historical and aesthetic values;
  (D) environmental integrity;
  (E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted; and
  (F) to the extent applicable, the effect of granting the certificate on the ability of this state to meet the goal established by Section 39.904(a) of this title.[48]

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[47] PURA § 37.056(a); *see also id.* § 37.051(a) (underlying requirement that electric utility obtain a CCN from the Commission to "directly or indirectly provide service to the public under a franchise or permit"); *id* § 11.003(19) (in PURA, "'[s]ervice' has its broadest and most inclusive meaning . . . includ[ing] any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under [PURA] to its patrons, employees, other public utilities, an electrical cooperative, and the public ")

[48] PURA § 37.056(c), *see also* 16 Tex. Admin. Code (TAC) § 25.101(b) ("the commission may grant an application and issue a certificate only if it finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public, and complies with the statutory requirements in [PURA] § 37.056.").

These factors reflect potentially competing policies and interests whose relative weight will vary with the particular circumstances of each case.[49] Consequently, "[n]one of the statutory factors is intended to be absolute in the sense that any one shall prevail in all possible circumstances," but must instead be balanced to the end of furthering "the overall public interest."[50]

EPE contends that Newman Unit 6 is necessary to meet an anticipated need for additional capacity, allowing EPE to continue to discharge its statutory obligation to provide continuous and adequate service in its certificated area.[51]

1. Adequacy of Existing Service/Need for Additional Service

a. Need for Additional Capacity

EPE's annual long-term resource-planning process identified a need for additional capacity. Through an annual Loads and Resources (L&R) analysis, EPE compiles and compares (1) the generating and purchased-power resources it expects to have available during each of the ensuing ten years, with (2) the anticipated peak loads in each corresponding year, according to twenty-year load forecasts that EPE prepares each year,[52] plus a 15-percent planning reserve margin.[53] No party contests EPE's reserve margin or its use in determining EPE's capacity needs.

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[49] *See Public Util Comm'n of Tex v Texland Elec Co*, 701 S.W.2d 261, 266-67 (Tex App—Austin 1985, writ ref'd n r.e.) ("To implement in particular circumstances such broadly stated legislative objectives and standards, the Commission must necessarily decide what they mean in those circumstances; and because some of them obviously compete *inter se*, the agency may in some cases be required to adjust or accommodate the competing policies and interests involved. For example, a 'need' for additional service implies a relative requirement, ranging from imperative need to one that is minimal, and, if a 'need' be sufficiently grave, it may have to prevail notwithstanding an adverse [e]ffect upon another interest, such as the environment," and *vice versa*)

[50] *Id* at 267.

[51] PURA § 37.056(c)(1)-(2); *see id* § 37.151 (CCN holder's obligations to "serve every consumer in the utility's certificated area" and "provide continuous and adequate service in that area").

[52] EPE Ex. 4 at 8 (Bates 11) (Gallegos Dir.); EPE Ex. 7 at 3 (Bates 5) (Novela Dir.)

[53] EPE Ex. 4 at 8-10 (Bates 11-13) (Gallegos Dir.).

EPE's 2017 L&R analysis determined that it would need approximately 50 MW in additional capacity beginning in 2022 and another 320 MW in additional capacity (for a total of 370 MW) beginning in the summer of 2023 to meet its peak demand and reserve margin into the future.[54] This determination was the origin of EPE's proposal to construct Newman Unit 6.

To address the identified need for additional capacity, EPE issued a non-baseload all-resource request for proposal in June 2017 (the 2017 RFP) to elicit resource proposals and identify cost-effective options.[55] EPE engaged an independent evaluator, Wayne Oliver of the Merrimack Energy Group, to oversee the RFP process.[56]

EPE received 81 bid proposals from 36 different companies for a wide variety of resource types and capacity options,[57] with the majority proposing to supply solar power, solar power with battery storage, or stand-alone battery storage.[58] Each of the various resource types were considered based on their inherent characteristics to reliably serve peak load.[59] After subjecting the bids to quantitative and qualitative reviews, EPE modeled proposals in Strategist to develop a coordinated integrated plan that would be best suited for EPE's system.[60] Through this process, EPE determined that the optimal resource plan that met all operational and reserve requirements was the following generation portfolio:

1. Hecate 100 MW solar PPA;
2. Buena Vista 100 MW solar with 50 MW battery storage PPA;

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[54] *Id* at 11-12 (Bates 14-15), Exh. OG-3 at 1 (Bates 56).

[55] *Id* at 15-16 (Bates 18-19)

[56] *Id* at 16-17 (Bates 19-20), Exh OG-1 at 3 (Bates 42)

[57] *Id* at 19 (Bates 22).

[58] *Id.* at 19, 21 (Bates 22, 24).

[59] *Id* at 21 (Bates 24).

[60] *Id* at 28-29 (Bates 31-32).

3. Canutillo 50 MW stand-alone battery storage PPA; and
4. Newman Unit 6 228 MW natural gas (an EPE self-build proposal).[61]

A third-party consultant confirmed that this combination of resources was the best option.[62]

EPE also evaluated the potential alternative of extending the lives of three older generating units scheduled to be retired in 2022 (discussed below) and keeping a fourth previously retired unit on inactive reserve. To that end, EPE retained another third-party consultant, Burns and McDonald, which estimated the costs of both five and 15-year life extensions.[63] Burns and McDonald determined that the O&M and investment costs for five additional years of operations would be approximately $143.3 million, excluding the incremental fuel costs.[64] The Strategist models selected neither the five nor the 15-year option as the top portfolio, although the 15-year option was present among the top 4,000 portfolios.[65] The 15-year extensions for all four units were then included in Strategist runs in direct competition with the resource additions EPE had selected.[66] The analysis showed that the portfolio of selected resources was the lowest reasonable cost option for providing reliable service to customers, and that extending the lives of the older generation units was not.[67]

Since its 2017 analysis, EPE's projected capacity needs have increased. EPE's 2019 L&R analysis showed capacity need at approximately 11 MW higher in 2022 and 12 MW higher in 2023 than had been forecasted in 2017.[68] Moreover, in August 2019, EPE set a new native system peak

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[61] *Id.* at 3-5, 30-31 (Bates 6-8, 33-34).

[62] *Id* at 21, 31-33 (Bates 24, 33-36)

[63] EPE Ex. 13 at 3 (Bates 5) (Gallegos Reb)

[64] EPE Ex. 17 at 2 (Bates 4) (Hawkins Reb)

[65] EPE Ex. 13 at 3 (Bates 5) (Gallegos Reb.)

[66] *Id*

[67] *Id*

[68] EPE Ex. 4 at 12 (Bates 15) (Gallegos Dir)

demand of 1,985 MW, 50 MW higher than the previous peak in July 2017, and 13 MW higher than its most recent forecast predicted.[69] Similarly, using its March 2020 load forecast, EPE showed total system demand increasing to 2,006 MW in 2022 and 2,032 MW in 2023, each approximately 40 MW higher than had been predicted in 2017—and thus correspondingly higher reserve margins and total capacity needs.[70]

Two chief factors contribute to EPE's projected capacity needs. The first is anticipated change to EPE's system resources, particularly the impact of the planned unit retirements. The second is anticipated growth in peak demand, as predicted in EPE's annual load forecasts. The City disputes both of these factors.

i. System Resources

As of 2019, EPE's generating units had a total nameplate capacity of approximately 2,070 MW, plus another 107 MW in nameplate capacity through PPAs for solar energy.[71] EPE has also purchased additional capacity or energy from wholesale suppliers.[72]

In December 2022, EPE is scheduled to retire its three oldest generating units, all gas-fired, as summarized in the following table:

Unit Name	Summer Net Capacity (MW)	Commission Year	Current Planned Retirement	Age at Planned Retirement
Newman Unit 1	74	1960	2022	62
Newman Unit 2	76	1963	2022	59
Rio Grande Unit 7	46	1958	2022	64

[69] EPE Ex. 7 at 11-12 (Bates 13-14) (Novela Dir.).

[70] EPE Ex. 13 at 4-5 (Bates 6-7) (Gallegos Reb.), EPE Ex 5 at Bates 2 (Gallegos Reb.,Workpapers).

[71] EPE Ex. 4 at 6-7 (Bates 9-10) (Gallegos Dir.).

[72] *Id*; Tr at 49-50 (Gallegos)

(Hereinafter the "Retiring Units").[73] EPE maintains that these units need to be retired for several reasons. First, they are well beyond their expected useful life and the industry average life (40-50 years).[74] Moreover, they are inefficient—they are unable to start or stop quickly, and must essentially be run twenty-four hours a day, from May through September, to be available to meet peak demand.[75] Finally, they present reliability risks and higher O&M costs.[76]

The 228-MW Newman Unit 6 would replace the 196 MW system capacity lost by retiring the units plus add an additional 32 MW in new generating capacity.[77] To account for the risk of delays or other contingencies in bringing Newman Unit 6 to operation, EPE intends to keep the Retiring Units available for service until Newman Unit 6 and the new solar PPAs selected with it are online.[78] Thereafter, EPE would keep the Retiring Units on inactive reserve for one or two years.[79]

As of the time of hearing, EPE had executed each of the three PPAs selected in the 2017 RFP and sought approval from the New Mexico Commission.[80] Although the New Mexico Commission approved the Hecate and Buena Vista PPAs, it denied approval for the Canutillo (stand-alone battery storage) PPA.[81]

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[73] EPE Ex. 4 at 13 (Bates 16), Exh OG-1 at 2 (Bates 41) (Gallegos Dir)

[74] *Id.* at 12, 14 (Bates 15, 17)

[75] EPE Ex. 8 at 4-5 (Bates 6-7) (Hawkins Dir); Tr at 91-92 (Hawkins).

[76] EPE Ex. 4 at 13 (Bates 16) (Gallegos Dir.)

[77] *Id* at 14-15 (Bates 17-18).

[78] *Id* at 15 (Bates 18).

[79] *Id.*

[80] EPE Ex. 12 at 6 (Bates 8) (Schichtl Reb)

[81] *Id* ; Tr. at 19 (Schichtl Cross).

EPE credited each of the solar PPAs with 25 percent, and the battery storage with 100 percent, of its nameplate capacity toward meeting peak load.[82] This translates to 25 MW in new capacity from Hecate and 75 MW (25 MW solar plus 50 MW battery) from Buena Vista, for a total of 100 MW in new capacity beginning in May 2022.[83] The Canutillo PPA would supply another 50 MW in capacity beginning in April 2023, were it to come online as scheduled.[84]

The City argues that EPE overstated its need for additional capacity by understating the appropriate capacity contributions from solar power under the Hecate and Buena Vista PPAs. The City points out that EPE has historically credited its pre-existing solar resources—107 MW through PPAs plus another 8 MW in EPE-owned generation—as contributing 70 percent of their nameplate capacity toward peak demand (or a total of approximately 81 MW rather than 115 MW).[85] Applying the same 70-percent capacity factor to the Hecate and Buena Vista PPAs instead of EPE's 25-percent factor would yield a total capacity contribution of 140 MW, a 90-MW capacity increase. The City asserts that EPE's 25-percent capacity factor is "seemingly manipulated to get to EPE's desired result to justify the addition of Newman 6,"[86] as it is significantly lower than the 70-percent capacity factor EPE had previously used (and continues to use) with respect to its pre-existing solar resources. The City draws a like contrast with the 76-percent capacity factor used for solar energy in the Electric Reliability Council of Texas (ERCOT) region[87] and a 50-percent capacity factor used by Entergy Louisiana.[88]

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[82] EPE Ex 4 at 22-24 (Bates 25-27) (Gallegos Dir)

[83] *Id* at 14-15 (Bates 17-18), Exh. OG-4 at 1 (Bates 57).

[84] *Id* at 14-15 (Bates 17-18), Exh. OG-4 at 1 (Bates 57)

[85] *Id* at 6, 22 (Bates 9, 25).

[86] City Reply Br. at 10.

[87] City Ex. 1 at 17-18 (Bates 18-19), Exh. SN-5 at Bates 39 (Norwood Dir)

[88] Tr at 66-67 (Oliver Cross)

The City also complains that EPE has failed to account for two additional solar purchased-power contracts, for which it sought approval from the New Mexico Commission, which would provide a total nameplate capacity of 70 MW, beginning in 2022, to be dedicated to New Mexico customers but part of EPE's total system resources.[89] Applying a 70-percent capacity factor to these contracts would yield a total capacity contribution of another 49 MW, as the City observes. EPE acknowledges that it did not include either contract in the L&R analyses it has presented in this case, but would apply the same 25-percent factor used with its other new solar PPAs, yielding only about 18 MW in additional capacity.[90]

EPE witness Omar Gallegos explained that the 25-percent capacity factor used for new solar resources takes account of two characteristics of solar power that create unique complexities in assessing its contribution to peak load.[91] First, solar power is generated only during the daytime, decreasing significantly during the late afternoon.[92] Consequently, Mr. Gallegos observed, increased reliance on solar energy will have the net effect of causing a shifted peak load to other resources during the evening hours, as solar power that served peak load during the day ceases to be available after sunset.[93] Second, solar power is intermittent, vulnerable to weather events like substantial cloud cover, presenting a risk that its actual output will be lower than expected—a risk that becomes especially critical during system peak.[94]

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[89] City Ex. 10 at 1 (Bates 19) (EPE Response to City RFI No. 5-13); Tr at 20-21 (Schichtl Cross)

[90] Tr at 29 (Schichtl Cross), 35-36 (Schichtl Redirect), 48-49 (Gallegos Cross)

[91] EPE Ex 4 at 21-23 (Bates 24-26) (Gallegos Dir.).

[92] *Id* at 22 (Bates 25).

[93] *Id* at 21, 23 (Bates 24, 26).

[94] *Id* at 22 (Bates 25)

Mr. Gallegos testified that EPE had credited its solar resources with contributing 70 percent of their nameplate capacity at a time when those resources comprised a relatively small percentage of EPE's system resources and less than a third of its reserve margin.[95] Thus, he testified, there was only a "marginal risk in meeting peak if cloud cover were to reduce solar output."[96]

However, once EPE began considering a greater reliance on solar during the 2017 RFP process, it undertook a more careful study to determine the solar capacity that could be expected to reliably serve its peak load.[97] EPE examined each minute of each peak load hour of each day in June through August of 2016 and found that 95 percent of the observations had solar at 25 percent output or greater during peak hours.[98] Mr. Gallegos testified that EPE's study results were consistent with a third-party analysis performed in 2019 by the National Renewable Energy Laboratory (NREL) for solar output projections in EPE's geographic location.[99] EPE therefore assigned the Hecate and Buena Vista PPAs a 25-percent solar capacity credit toward peak for resource-planning purposes, assuming it continued to use the 15-percent planning reserve margin.[100] Mr. Gallegos testified that were EPE to assign a higher solar contribution to peak, it would need to increase its reserve margin to ensure reliability, given the risk of solar intermittency.[101]

While the City suggests that EPE undermines the credibility of these studies by continuing to use the 70-percent capacity factor with its pre-existing solar resources,[102] Mr. Gallegos explained that the lower capacity rating on the newer resources is consistent with industry practice

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[95] *Id*

[96] *Id*

[97] *Id*

[98] *Id*

[99] *Id* at 23 (Bates 26), Exh OG-6 at 1-34 (Bates 100-133)

[100] *Id.* at 22-23 (Bates 25-26).

[101] *Id* at 23 (Bates 26)

[102] City Initial Br. at 7; City Reply Br at 9.

of crediting increasing levels of solar with a declining contribution to peak, as the net peak load shifts toward sunset and solar power is no longer available to help serve the load.[103] The same industry practice was vouched for by Mr. Oliver, the independent evaluator who assisted EPE with the 2017 RFP.[104] Mr. Oliver testified that EPE's 25-percent value was "much closer to the norm" than a 70-percent measure.[105] As for any comparisons to ERCOT or other locations, Mr. Gallegos observed that with the Hecate and Buena Vista PPAs, at nameplate capacity, solar will represent approximately 13 percent of EPE's total resources, whereas solar resources represent only about two percent of ERCOT's total resources.[106] Staff and OPUC support EPE's assigned 25-percent capacity value in light of the reliability issues that arise with EPE's expanded reliance on solar power.[107]

Considering the nature of solar resources, EPE's local conditions, and EPE's increasing reliance on solar resources, the ALJs are persuaded that EPE's 25-percent capacity factor is an appropriate measure of the capacity contributions to peak from its new solar resources. The unique nature of solar power causes an inverse relationship between total system resources and capacity-factor rating, such that increasing levels of solar should be treated as making a declining contribution to peak. The ALJs are further persuaded that applying a 70-percent capacity factor to additional solar resources as a basis for meeting system demand and a 15-percent reserve margin would create reliability risks.

Accordingly, the ALJs find that EPE has appropriately assigned the Hecate and Buena Vista PPAs a capacity value of 25 MW each, or 50 MW total. And while two more recent solar PPAs should be accounted for in determining EPE's total system resources, assuming they are ultimately approved, the ALJs agree with EPE that their capacity contribution should, for the

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[103] EPE Ex. 13 at 7 (Bates 9) (Gallegos Reb.)

[104] EPE Ex. 14 at 1-3 (Bates 3-5) (Oliver Reb.).

[105] *Id.* at 1 (Bates 3).

[106] EPE Ex 13 at 6 (Bates 8) (Gallegos Reb.).

[107] Staff Initial Br. at 10; OPUC Initial Br. at 8-9.

reasons already stated, be valued in the same manner as the Hecate and Buena Vista PPAs—at 25 percent of their 70 MW nameplate capacity, or approximately 18 MW.[108]

Moreover, the addition of the two new solar PPAs would further support EPE's rationale for assigning the 25-percent capacity factor, as they would increase EPE's total nameplate solar resources from 13 percent to 15 percent of its total system resources.[109]

On the other hand, the total capacity attributed to EPE's new solar resources could actually decrease, depending on EPE's actions on the Canutillo battery-storage PPA following the New Mexico Commission's denial of approval. Although EPE can still proceed with that contract if dedicated solely to Texas, EPE had not yet determined its course of action as of the time of the hearing.[110] If EPE does not proceed with acquiring this resource, 50 MW in capacity previously included in EPE's system resources beginning in 2023 would be lost—a net decrease of approximately 33 MW over the capacity the two more recent solar contracts would add.[111]

ii. Future Loads

The City also argues that EPE's determinations of capacity need, even if otherwise valid, were rendered "irrelevant" by the COVID-19 pandemic.[112] As EPE acknowledges, each of the load forecasts and L&R analyses presented in this case predated the business shutdowns and other disruptive effects from the pandemic and thus would not reflect the resultant impact, if any, on EPE's long-term peak demand.[113] Because the pandemic has interjected new, significant, and

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[108] Tr at 35-36 (Schichtl Cross).

[109] City Ex. 10 at 1 (Bates 19) (EPE Response to City RFI No. 5-13).

[110] Tr. at 19-20, 30-31 (Schichtl Cross).

[111] Approximately 17 MW increase less 50 MW decrease.

[112] City Initial Br. at 17.

[113] Tr. at 51 (Gallegos Cross); EPE Ex. 15 at 1 (Bates 3) (Novela Reb.); City Ex. 25 at Bates 1 (EPE Response to City RFI No. 2-1).

heretofore unaddressed uncertainties regarding EPE's future peak demand, the City urges, EPE has failed to meet its burden of proof to demonstrate a probable need for additional capacity.

While contending that the effects of COVID-19 on future demand are currently "unknown,"[114] the City would also infer from the presently known facts that the pandemic's disruptive effects are likely to cause a significant reduction.[115] The City notes that the El Paso area experienced its highest unemployment rate since the year 2000 between March and April 2020, the period in which the pandemic's impact began to be felt acutely.[116] The City also emphasizes that EPE's native system energy sales in April 2020 decreased by 5.7 percent compared to the prior year.[117] The City also references anecdotal evidence about COVID-19's disruptive effects—store closures, stay-at-home orders, and working from home rather than in an office.[118]

As for why or how these phenomena translate into a decrease in EPE's long-term demand, the City points out that EPE's annual load forecasts derive their future-year demand projections in part from energy-sales forecasts and econometric data.[119] Consequently, the City reasons, lower energy sales and the broader economic slowdown caused by COVID-19 will mean lower demand

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[114] City Initial Br at 3

[115] City Ex. 1 at 13 (Bates 14) (Norwood Dir.).

[116] City Ex. 3 at Bates 3-5 (Texas Workforce Comm'n, May Labor Market Review); City Ex. 4 at Bates 3 (Texas Workforce Comm'n website)

[117] EPE Ex. 15 at 7 (Bates 9) (Novela Reb.)

[118] During the hearing, for example, the City elicited acknowledgments from various EPE witnesses about having to work from home rather than the office, the imposition of stay-at-home-orders, that local stores were closed, that a witness had not been out to eat in a restaurant since the pandemic's effects began to be felt, and that a witness had been wearing a mask prior to testifying. Tr. at 47, 52-53 (Gallegos Cross), 71 (Novela Cross).

[119] EPE forecasts its native system energy sales for each future year using historical sales and customer data and adjusting for economic trends and weather conditions EPE then forecasts native system demand by multiplying each year's energy-sales projection by the "load factor," a ratio that compares the native system's actual average load to its peak load during the prior year and reflects how fast demand and energy are increasing in relation to one another. As explained further below, EPE's native system demand has been increasing faster than energy over time, resulting in a decreasing load factor and a tendency to under-forecast demand growth. EPE Ex 7 at 3-11 (Bates 5-13) (Novela Dir.); Tr. at 70 (Novela).

projections under EPE's own forecasting methodology. City witness Scott Norwood opined that a decrease of "only" ten percent in the peak demand EPE forecasted in a given future year (approximately 200 MW) "would largely eliminate the need for [the 228 MW] Newman 6 for the next 10 years."[120]

EPE acknowledges "how bleak the current economic situation is in the El Paso area due to the pandemic,"[121] and that the impact of COVID-19 is "a known factor with unknown consequences."[122] Moreover, EPE witness George Novela, the company's official responsible for its load forecasting,[123] testified that "[t]he two central sources of uncertainty come from the unknown magnitude of the impact on EPE's various customer classes, on both a demand and energy basis, as well as the duration of the pandemic."[124] He admitted that "[m]eaningful long-term forecasts that take into account the effect of the pandemic on EPE's forecasted energy and demand are not possible at this time."[125]

Nevertheless, Mr. Novela maintained that both the limited data available at the time of the hearing and an analysis of EPE's historical demand patterns pointed toward a minimal impact of the pandemic on EPE's long-term demand growth.[126] While acknowledging that native system energy in April 2020 was lower than in April 2019, Mr. Novela pointed out that native system peak demand for that same month had actually seen a year-to-year increase of 9.8 percent, reflecting a much greater resiliency in peak demand compared to energy.[127] Although referring to

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[120] City Ex. 1 at 15 (Bates 16) (Norwood Dir.).

[121] EPE Reply Br. at 10

[122] EPE Ex. 15 at 2 (Bates 4) (Novela Reb); *see also* Tr. at 51-52 (Gallegos Cross) ("my understanding [is] that at this time, there's no clear understanding of what the . . . effects [of COVID-19] are going to be" on EPE's load forecasts).

[123] EPE Ex 7 at 1 (Bates 3) (Novela Dir.).

[124] EPE Ex. 15 at 2 (Bates 4) (Novela Reb.).

[125] *Id*

[126] *Id* at 7 (Bates 9)

[127] *Id*

only one month of data, Mr. Novela observed that the period represented an entire month in which stay-at-home orders had been in effect, an extreme degree of economic disruption.[128] He added that data for May 2020 again showed growth in demand, and also in energy, compared to the previous year.[129]

More critically, Mr. Novela testified that these figures were consistent with a larger pattern of EPE's peak demand being quite impervious to economic downturns.[130] He showed that EPE's demand had increased at a faster average rate than energy between 2000 through 2019 (decreasing by no more than 1.5 percent in only two of those years) and continued to grow, and grow faster than energy, through both the "dot-com bubble" of 2001 and the Great Recession between late 2007 and 2009.[131] Mr. Novela ascribed this demand growth and resiliency to two related factors.

First, Mr. Novela pointed out that the growth in EPE's peak demand correlated to growth in EPE's retained customers that more than made up for any declines in energy usage.[132] Second, Mr. Novela noted that energy consumption by EPE's residential customers has been growing as a share of its energy sales relative to its energy sales to large industrial customers, while customers are also increasingly moving away from limited-cycling evaporative cooling units to refrigerated air conditioning, which uses much more energy and cycles on and off in response to temperature changes.[133] The result has been increasingly accentuated, weather-driven demand swings that are growing at a faster rate than EPE's energy sales and are less affected by recessionary periods.[134] He observed that peak demand "is driven more by customer growth and weather conditions than by economic conditions," because "[a] consumer of energy may adjust their energy usage over a

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[128] *Id*

[129] Tr at 73-74 (Novela Cross).

[130] EPE Ex 15 at 7 (Bates 9) (Novela Reb)

[131] *Id* at 2-4 (Bates 4-6).

[132] *Id* at 4-5 (Bates 6-7).

[133] *Id* at 5-6 (Bates 7-8).

[134] *Id*

period of time to account for a worsening of the economy, but if the temperature reaches triple-digits during the middle of a summer heat-wave, the air conditioner will most likely be running at maximum capacity regardless of the economic conditions."[135] Another implication of these dynamics is that EPE's load forecasts have tended to underestimate peak demand.[136]

The City argues that the April 2020 demand data is not "meaningful or even germane," given that EPE's resource planning is based on summer peak demand.[137] The City also argues that the two prior economic downturns are distinguishable because the COVID-19 disruptions are of a far greater magnitude and accompanied by stay-at-home orders, business closures, and unemployment to an extent not previously experienced.[138] Consequently, the City insists, EPE has not (and cannot) demonstrate a probable need for Newman Unit 6, as "EPE has not modeled, does not know, and cannot predict the effects of COVID-19 on system and summer peaks in 2020 or any future year."[139]

In response, EPE questions the City's tacit assumption that any distinctions between the present situation and prior downturns would necessarily imply lower peak demand. It notes, for example, that persons required to work from home will often be running their air conditioners there.[140] EPE further insists that there is no evidence to support discarding its long-term demand forecasts demonstrating that it is facing a critical shortage in the capacity needed to meet its obligations to ensure reliable service to its customers.[141] As Mr. Novela put it, "EPE has to plan for such uncertainties by forecasting with what it knows," and "cannot plan for the future by

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[135] *Id* at 5 (Bates 7).

[136] EPE Ex 7 at 8-9, 10-11 (Bates 10-11, 12-13) (Novela Dir); EPE Ex. 15 at 5 (Bates 7) (Novela Reb.)

[137] City Initial Br. at 11; Tr. at 70 (Novela Cross).

[138] City Reply Br. at 4, Tr. at 71 (Novela Cross)

[139] City Initial Br. at 11-12

[140] Tr. at 78 (Novela Redir.). Mr. Novela also suggested that the "unprecedented" amounts of economic stimulus being initiated by the federal government could well ameliorate the downturn. EPE Ex. 15 at 6-7 (Bates 8-9) (Novela Reb.)

[141] EPE Reply Br at 10

abandoning its long-term forecast as a result of uncertainties and external factors which cannot be quantified at this time."[142] And EPE, joined by Staff and OPUC, argue that the information available to date tends to refute, rather than support, any cause for materially altering EPE's prior demand forecasts.[143]

Although the COVID-19 pandemic has created uncertainty, the ALJs are not persuaded that the pandemic's effects will reduce EPE's peak demand to a degree that would obviate the need for the capacity Newman Unit 6 would provide. EPE's 2017 and 2019 load forecasts and L&R analyses demonstrated a need for that capacity that has been proven conservative by subsequent events. Aside from its complaints regarding solar resources, the City has not challenged those calculations as of the time they were made. While COVID-19 has since caused significant disruptions to economic and other human activity,[144] whether this will lead to material reductions in EPE's long-term demand remains no more than speculation. It is equally plausible that the impact, if any, will be in shifting class consumption rather than lowering demand. Instead, the preponderance of the evidence weighs in favor of demand not differing materially from EPE's prior analyses, given the resiliency of EPE's peak demand in past economic downturns and the broader dynamics that underlie that behavior.

Furthermore, the ALJs find it is especially unlikely that EPE's system resources could withstand the 196-MW capacity reduction from the planned unit retirements without a replacement. The case for those retirements is compelling, as is demonstrated below. Consequently, if EPE abandons or delays Newman Unit 6, there is a substantial risk that EPE would experience significant deficiencies in meeting its reserve requirements, if not also demand, beginning in 2023, and in either case fail in its obligation to ensure adequate and reliable service.

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[142] EPE Ex. 15 at 2 (Bates 4) (Novela Reb.).

[143] Staff Initial Br at 11-12, OPUC Initial Br at 6-7

[144] Which has been felt even in the course of proceedings in this case—the ALJs were required by emergency order to conduct both the hearing on the merits and a prehearing conference via remote means rather than in person, using a videoconferencing platform, in light of the public-health risks created by the COVID-19 pandemic

Therefore, the ALJs conclude that EPE has adequately demonstrated need for the capacity Newman Unit 6 would provide, notwithstanding any uncertainties created by the COVID-19 pandemic.

In reaching that conclusion, the ALJs are mindful that "the need for additional service" in the context of PURA § 37.056(c) is less an absolute than a policy consideration to be balanced with others enumerated in the statute, considerations that are also "subject to the uncertainties that always attend any prediction of economic conditions and factors."[145] The ALJs are also mindful that while "[t]he facets of public need may very well be fluid," the CCN determination must be made based on the evidence presented at the hearing,[146] and that PURA provides other mechanisms to address subsequent material changes in circumstances. The certiciate "is essentially a license which indicates that a need for additional capacity has been demonstrated and at the time of certification the proposed/certificated facilities *appeared* to be a reasonable means of meeting the additional capacity needs,"[147] such that the utility should be permitted to invest capital and begin construction.[148] This determination is distinct from the question of whether (or the extent to which) the utility ultimately can recover the costs of that resource through rates.[149] The latter determination will be made in a subsequent rate case, at which time EPE may be called upon to demonstrate the prudence of continuing with the Newman Unit 6 project in light of any intervening events or changed circumstances.[150]

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[145] *Texland Elec Co* , 701 S.W.2d at 265-67.

[146] *Hammack v Pub Util Comm'n*, 131 S W.3d 713, 724 (Tex App —Austin 2004, pet. denied).

[147] *Gulf States Util Co v Pub Util Comm'n*, 841 S.W.2d 459, 473 n. 12 (Tex App.—Austin 1992, writ denied) (quoting, with added emphasis, *Application of El Paso Elec Co for Authority to Change Rates*, Docket No. 5700, Examn'rs' Rep't at 31).

[148] *See State of Tex v Pub Util Comm'n*, 883 S W 2d 190, 198 (Tex 1994); *Texas-New Mexico Power v Tex Energy Consumers*, 806 S.W.2d 230, 233 (Tex. 1991); *Gulf States Util Co* , 841 S.W.2d at 473 & n. 12.

[149] *See State of Tex* , 883 S.W.2d at 198; *Texas-New Mexico Power*, 806 S W.2d at 233; *Gulf States Util Co* , 841 S W 2d at 473 & n 12

[150] *See State of Tex* , 883 S W 2d at 198 ("that asset will not be included in the utility's rate base until a rate hearing is conducted and the Commission determines that the costs of building the asset are prudent, reasonable and necessary and related to property that is used and useful in providing service.").

Such a mechanism provides the appropriate safeguard to ratepayers and the public in the event yet-unknown circumstances following CCN approval were to materially impact the need for Newman Unit 6.[151]

b. Alternatives to Newman Unit 6

Regarding alternatives, the parties frame their arguments in terms of whether Newman Unit 6 is the *lowest reasonable cost resource* to meet the identified capacity need. However, none cite, nor can the ALJs find, any authority for the imposition of such a standard in the CCN approval process. Accordingly, the ALJs address the Commission's question of whether "the proposed Newman Unit 6 [is] *a prudent alternative* to meet th[e] need for additional capacity?"[152]

The City argues that instead of moving forward with Newman Unit 6, EPE should postpone the retirements of the Retiring Units, which would contribute the lion's share (196 MW) of any potential capacity deficit, until the pandemic's impact on long-term demand can be better understood. In the interim, the City proposes that EPE meet any additional capacity needs through short-term power purchases. The City points out that EPE has already planned to suspend the unit retirements in the event Newman Unit 6 is not operational by the target date.[153] It adds that EPE has used short-term power purchases in its past resource planning as a gap-filler whenever EPE's L&R analyses showed deficient reserves in a given future year.[154]

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[151] *See Gulf States Util Co* , 841 S.W 2d at 472-73, 475-77 (holding that CCN approval of transmission line linking Gulf States to another utility did not determine prudence of future capacity purchases for ratemaking purposes), *Application of Southwestern Electric Power Co for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 40443, Order on Rehearing at 4-8 (Mar. 6, 2014) (analyzing whether utility's decision to proceed with construction of CCN-approved plant "was uneconomic, and therefore imprudent," in light of changed circumstances; observing that "[t]he Commission's approval of a CCN amendment for a generation plant does not authorize the utility to continue with construction regardless of changing conditions Rather, a company has a duty to its ratepayers to continue to evaluate the project during construction.").

[152] Preliminary Order at 4 (emphasis added).

[153] EPE Ex 4 at 15 (Bates 18) (Gallegos Dir). The City further asserts that the timing of EPE's CCN filings belies any true expectation of actually meeting the May 2023 target date. City Reply Br. at 5.

[154] Tr. at 49-50 (Gallegos Cross).

To support its proposal, City witness Mr. Norwood adjusted EPE's 2019 L&R analysis[155] to reflect deferring the retirements of the Retiring Units and the start date for Newman Unit 6 for four years (until 2027); and, during the same four years, EPE purchasing between 35 and 60 MW in short-term power annually, consistent with (and, at time, lower than) amounts it had predicted making in other years.[156] With this adjustment, Mr. Norwood's showed that EPE would meet its reserve margin in each of the four years.[157] Mr. Norwood therefore concluded that EPE should "delay the decision to pull the trigger" on Newman Unit 6 for "a year or two," until more was known about COVID-19's impact on long-term demand.[158]

While not disputing that the Retiring Units are beyond their useful lives and industry-average retirement ages and are considerably less efficient than Newman Unit 6 would be, Mr. Norwood opined that the reliability of the three units had been "remarkably good over the last several years," given their respective summer-peak-month-equivalent-availability performance in each year between 2015 and 2019.[159] Mr. Norwood added that EPE had rarely experienced customer outages and had only one in the preceding ten years.[160]

On the other hand, Mr. Norwood admitted that older generating units can have higher O&M expenses than newer ones, and that he had not estimated those expenses should their retirements be delayed.[161] The evidence showed that EPE's O&M expenses for the Retiring Units between 2014 and 2019 ranged between $0.4 and $5.8 million per unit and that annual capital costs

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[155] Which, as previously explained, would incorporate EPE's 2019 load forecast but also include the 50 MW Canutillo PPA in EPE's system resources.

[156] City Ex 1 at 13-14 (Bates 14-15) (Norwood Dir); *compare* EPE Ex. 4, Exh OG-4 at 1 (Bates 57) (Gallegos Dir)

[157] City Ex 1 at 13-14 (Bates 14-15) (Norwood Dir).

[158] Tr at 97-100, 105-07 (Norwood Cross) Mr Norwood also advocated the delay so that EPE might "refresh their modeling" as to the potential impact of the NMETA, which was enacted in 2019. Tr. at 105-06, City Ex 1 at 18-19 (Bates 19-20) (Norwood Dir). The ALJs address the City's arguments regarding the NMETA in connection with costs to consumers, below.

[159] City Ex. 1 at 15-16 (Bates 16-17) (Norwood Dir.)

[160] *Id* at 16 (Bates 17).

[161] Tr at 101-02 (Norwood Cross)

had ranged between zero and $3.3 million.[162] Given these "very low" costs, Mr. Norwood deemed it a "no-brainer" for EPE to keep these units in operation for the time being, in lieu of proceeding with Newman Unit 6 amid the present COVID-19-related uncertainties.[163]

EPE counters that the City's reliance on historical costs or performance ignores substantial investments required to extend the Retiring Units' lives and ensure their reliability going forward. The analyses performed by Burns & McDonnell during the 2017 RFP process estimated the costs of extending their lives by five years to be approximately $101 million, plus another $4.3 million in increased fuel costs.[164] Although the City proposes an extension of as little as one year, Burns & McDonnell's estimate included several one-time or periodic repairs—akin to an old car needing new tires—required to extend the units' lives for any number of years beyond the current planned dates.[165] Thus, even a one-year extension of the Retiring Units would entail approximately $40 million in capital costs and non-recurring O&M expenses, under EPE's estimates.[166] These costs would be in addition to fixed O&M costs estimated to be approximately $4.7 million during 2023, plus an estimated increase in fuel costs of $4.3 million compared to Newman Unit 6.[167]

The ALJs find the City's argument unpersuasive. The City would have EPE forego construction of a brand-new 228-MW generating unit, costing approximately $160 million but providing service for decades to come, by extending the lives of three generators that originated during the Eisenhower and Kennedy administrations at a cost of approximately $40-50 million for a single year and as much as $101 million for five years. The ALJs do not find it efficient for EPE

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[162] City Ex 9 at Bates 4 (EPE Response to City RFI No. 5-20 & 5-21)

[163] Tr. at 102 (Norwood Cross)

[164] EPE Ex. 17 at 2 (Bates 4) (Hawkins Reb.) The total is derived by subtracting out the expenses that the study had attributed to Rio Grande Unit 6.

[165] City Ex. 26 at Bates 26-27 (EPE Response to City RFI No. 7-17).

[166] *Id* at Bates 26

[167] *Id*

to expend such large shares of the new unit's cost merely to buy time to measure whether COVID-19 or other future events could conceivably reduce EPE's previously determined long-term capacity needs by some unknown increment. The notion that such unknowns might eliminate the capacity need to be served by Newman Unit 6 is improbable. In addition to the historical demand behavior previously noted, and the unlikelihood that demand will fall so precipitously that the Retiring Units and their inevitable replacement will no longer be needed, EPE has scheduled *additional* retirements in 2026 that would reduce EPE's system capacity by over 300 MW.[168] The ALJs conclude that Newman Unit 6 is the more prudent alternative.

The City also argues that EPE can supplement its long-term demand with short-term power purchases, similar to what EPE has done in the past. To the extent the City is suggesting a more expansive use, the evidence showed that short-term power purchases are not a reliable means of meeting EPE's long-term capacity needs.[169] The City also suggested that EPE's future deployment of advanced metering could reduce its capacity needs. However, there is no indication that any such effects would materially impact the capacity need to be served by Newman Unit 6.

2. Effect of Granting the CCN on EPE and Any Electric Utility Serving the Proximate Area

EPE's evidence regarding the third factor of PURA § 37.056(c) is uncontested.

a. Effect on EPE

EPE presented evidence that Newman Unit 6 will be a means of providing additional power to serve EPE customers, especially at times of peak demand, and enhancing EPE's ability to

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[168] EPE Ex. 4, Exh. OG-4 at 1 (Bates 57)

[169] City Ex 24 at Bates 1 (EPE Response to City RFI No. 7-10).

provide reliable service.[170] It will also contribute to fuel cost savings for EPE because of its efficiency and relatively low heat rate.[171]

Other important benefits are voltage support in the local system and additional flexibility in scheduling maintenance outages.[172] The system line loading depends substantially on the location and magnitude of the load and the location of the generation that serves that load. EPE's highest growth areas are in the northeast and east areas of El Paso. Newman Unit 6 offsets the retirements of Newman Units 1 and 2 given their common location, and the additional output of Newman Unit 6 will reduce the flows on the transmission lines that currently serve that area, facilitating EPE's ability to perform required maintenance on those transmission lines.[173]

The cost of the proposed project will have minimal effect on EPE's financial position. EPE plans to use cash from operations, common stock equity, available borrowings under the retained cash flow and debt issuances in the capital markets or, after the closing of the merger, an equity commitment from its parent, to finance construction expenditures. This will provide EPE the flexibility to maintain a balanced capital structure during the construction of Newman Unit 6. EPE expects to maintain its investment grade bond ratings, which are currently BBB and Baa2 as assigned by Standard & Poor's and Moody's, respectively.[174]

b. Effect on Other Utilities

The addition of Newman Unit 6 will have minimal impact upon other utilities in the proximate area and will not impair their operations. As previously indicated, the unit will be located at EPE's existing Newman Generating Station, where five gas-fired generating units

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[170] EPE Ex 8 at 14 (Bates 16) (Hawkins Dir)

[171] *Id*

[172] *Id*

[173] *Id* at 15 (Bates 17)

[174] EPE Ex. 3 at 13 (Bates 15) (Schichtl Dir.).

already exist. The distances between this site and the two bulk power interconnections are approximately 60 miles for Public Service of New Mexico (PNM) and Tri-State in Alamogordo, New Mexico and 130 miles for PNM in Deming, New Mexico. Therefore, any additional loading will be primarily on EPE's system.[175]

Because Newman Unit 6 is planned for and will be dedicated to serve only EPE's customers, there will be no anticipated effect on energy prices for other utilities in the wholesale power market.[176] Further, because the Western Electricity Coordinating Council (WECC) does not impose congestion charges, Newman Unit 6 will not have any effect on such charges.[177] EPE will always need to have local generating units online because of its location in the WECC, and Newman Unit 6 may function in a reliability-must-run capacity from time to time.[178]

3. Effects on Consumers

a. Probable Improvement of Service or Lowering Cost to Consumers

EPE asserts that the overall impact of Newman Unit 6 on its ratepayers will be "minimal."[179] In the first full year of the unit's operation, EPE witness James Schichtl estimates that its base rate revenue requirement (reflecting recovery of capital and operating costs of Newman Unit 6) could increase by almost $18.6 million, translating to an increase of $1.77 per month for the average residential customer using 642 kWh per month.[180] However, EPE also estimates that this increase will be partly offset by a $0.31 reduction in the fuel component of that customer's monthly bill, attributable to an estimated $4.3 million annual reduction in fuel costs,

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[175] EPE Ex. 8 at 15-16 (Bates 17-18) (Hawkins Dir.).

[176] EPE Ex 10 at 1 (Bates 3) (Hawkins Supp. Dir.).

[177] *Id* at 2 (Bates 4).

[178] *Id*

[179] EPE Ex. 3 at 13 (Bates 15) (Schichtl Dir)

[180] *Id* at 13-14 (Bates 15-16)

as identified in a PROMOD operating simulation, compared to the generating units being replaced.[181]

Consequently, EPE foresees a $1.45 net increase in the average residential customer's monthly bill, or 1.85 percent, in 2024.[182] EPE intends to address any effect of Newman Unit 6 on its base rates in a future general rate case proceeding, when all cost of service changes will be considered concurrently.[183] EPE states that it intends to pass on to its Texas customers, through its fixed fuel factors, any fuel cost savings it realizes from the addition of Newman Unit 6.[184]

The City argues that EPE's analysis "understated and effectively misrepresented a minimal customer impact."[185] First, the City emphasizes that EPE estimated the $1.77-per-month cost by using an energy allocator instead of the demand allocator EPE actually uses in its rate cases for its Texas jurisdictional customers.[186] This assertion is based on a footnote in Mr. Norwood's testimony which states "[t]his assumption [that the costs are allocated on an energy basis] likely understates the estimated rate increase for Residential class customers when compared to EPE's normal allocation of generating asset costs on a peak demand allocation basis."[187] Mr. Norwood did not elaborate.

Mr. Schichtl defended his estimate, notwithstanding the different allocation method, because the ultimate allocation to residential customers would not necessarily be based on cost.[188]

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[181] *Id* at 14 (Bates 16).

[182] *Id*

[183] *Id*

[184] *Id*

[185] City Initial Br. at 3, 14-16.

[186] City Initial Br at 14-15; Tr. at 22-24 (Schichtl Cross).

[187] City Ex. 1 at 9 (Bates 10), n. 15.

[188] Tr at 36-37 (Schichtl Redirect).

Moreover, the $1.77-per-month estimate did not account for removing the Retiring Units from cost of service, suggesting that the estimate may actually have been overstated.[189]

Second, because NMETA will require EPE to supply 100 percent of the power to its New Mexico customers through carbon-free resources by 2045,[190] the City also argues that Newman Unit 6 will be rendered unusable to serve New Mexico customers, requiring EPE to shift recovery for the unit's costs entirely to Texas ratepayers, which will likely increase the percentage of Newman Unit 6 or other carbon-based generation that is allocated to Texas.[191]

EPE counters that these jurisdictional-allocation issues are not a basis for denying a certificate but should be addressed in future rate proceedings. Similarly, Staff argues that the NMETA "does not control how EPE plans to serve its Texas customers," only the resources and energy delivered to its New Mexico customers, which "only make up approximately 20% of EPE's customer base."[192] "Therefore," Staff concludes, the NMETA "should not factor into the consideration for Newman Unit 6 approval."[193]

Finally, the City argues that EPE understates costs to consumers by failing to account for the possibility that EPE may nevertheless delay the construction or commercial operation if the need for the plant fails to materialize due to demand reductions from COVID-19 or other causes.[194] The City notes that EPE plans to recover incremental costs associated with any delay as AFUDC.[195] The City references EPE's acknowledgement that if such a delay became necessary, "all costs including AFUDC would be subject to a reasonableness and prudence review by

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[189] *Id* at 42

[190] City Initial Br. at 13-15.

[191] *Id* at 14-15

[192] Staff Initial Br at 16

[193] *Id*

[194] City Initial Br. at 15-16.

[195] City Ex. 16 at 1 (Bates 4) (EPE Response to City RFI No 6-4)

regulatory authorities" that would "protect ratepayers from any AFUDC that is unreasonably incurred."[196]

In any event, "EPE does not expect to delay commercial operation of Newman Unit 6 if certificated, based on the best information available at this time."[197] Consequently, the ALJs construe the City's complaint regarding AFUDC as ultimately re-urging its argument that EPE has not demonstrated need for Newman Unit 6 in the face of COVID-19 or other contingencies that might reduce future demand.

Although the actual rate impact to customers will be determined in a rate proceeding, for purposes of determining whether the certificate is necessary for the service, accommodation, convenience, and safety of the public, the relevant inquiry is whether granting the certificate will result in a probable lowering of cost to consumers.[198] EPE does not contend—and the ALJs' decision does not turn on a determination—that adding Newman Unit 6 will *lower* cost to customers; EPE contends only that the average customer will probably experience no more than a $1.77 per month increase, less the costs incident to taking the Retiring Units out of operation. The ALJs, therefore, do not address whether the different cost-allocation methods, or its jurisdictional allocation, render EPE's estimates unreasonable as a measure of the rate impact of adding Newman Unit 6. Any NMETA-driven allocation impacts will apply to any non-zero carbon generation in operation 20 years hence, and may be addressed at that time. Further, the ALJs do not believe that any concern with potential delay to construction or commercial operation of the project outweigh the other factors supporting certification, and, as previously discussed, customers will be protected through review of the prudence of any such delay.

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[196] *Id*

[197] *Id*

[198] PURA § 37 056(c)(4)(E)

b. Effect on Implementation of Customer Choice

Under PURA § 39.553 and 16 TAC § 25.421, the timeline for implementation of retail competition in EPE's service territory depends on completing a five-stage process, the first of which is development, approval and operation of a regional transmission organization (RTO) for the EPE region.[199] Approval of an amendment to EPE's CCN for the construction, ownership and operation of Newman Unit 6 will not affect the development of an RTO in which EPE could participate, nor would it affect any subsequent stage toward full retail competition in EPE's service territory.[200]

4. Other PURA § 37.056(c)(4) Factors

Under PURA § 37.056(c)(4), the Commission is to consider, in addition to effects on consumers, effects on community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the ability of the state to meet its renewable energy goal established by PURA § 39.904(a). Apart from the effects on consumers, addressed above, no party contests any PURA § 37.056(c)(4) factors.

The most significant potential impact is the presence (or absence) of a facility, which could result from altering undisturbed habitats, communities, or other locations where similar developments did not already exist. However, because Newman Unit 6 will be constructed at the existing Newman Generating Station, it will not result in new ground disturbance or expansion of the site.[201]

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[199] EPE Ex. 3 at 12 (Bates 14) (Schichtl Dir.).

[200] *Id*

[201] EPE Ex 9 at 6 (Bates 8) (Christianson Dir.)

a. Community Values

Because EPE will build Newman Unit 6 at an existing Texas generating station site, it will have only minimal effect on community values in Texas.[202] This siting also protects community values by concentrating industrial development and minimizing additional transmission, water and gas infrastructure, as compared to dispersing such development throughout the community.[203] Further, the closest residence to the site for Newman Unit 6 is located approximately one mile north/northeast of the existing Newman Generating Station, near the Texas-New Mexico state line.[204] Therefore, the effect of Newman Unit 6 on community values will be negligible.[205]

b. Recreational and Park Areas

Newman Unit 6 will not be located within one-half mile of any area designed by a governmental body as a park or recreation area.[206] Construction of the Newman Unit 6 will not impair the public enjoyment of regional parks and recreation areas. Therefore, certifying the project will not adversely affect any parks or recreational areas.[207]

c. Historical and Aesthetic Values

There are several archeological sites in the vicinity, but none currently listed on the National Register of Historic Places within one-half mile of Newman Generating Station. Because the footprint of Newman Unit 6 is contained within the existing Newman Generating Station,

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[202] *Id*

[203] *Id* at 7 (Bates 9).

[204] *Id* at 9 (Bates 11).

[205] *Id*

[206] *Id* at 8 (Bates 10)

[207] *Id*

impacts to other unlisted archeological sites will also be avoided.[208] Further, siting Newman Unit 6 at the existing Newman Generating Station protects aesthetic values by concentrating industrial development and minimizing additional transmission, water, and gas infrastructure, as compared to dispersing such development across a landscape.[209] Newman Unit 6's effect on historical and aesthetic values will be minimal.

d. Environmental Integrity

Newman Generating Station's existing Prevention of Significant Deterioration (PSD) permit and New Source Review (NSR) permit require modification to account for the addition of Newman Unit 6, as do the current Site Operating Permit (SOP) and Acid Rain Permit. An initial application for modification of the PSD permit was submitted to the Texas Commission on Environmental Quality (TCEQ) on November 16, 2019, and approval is expected to take eight to 12 months.[210]

Newman Unit 6 will be fired exclusively by pipeline-quality natural gas and be equipped with pollution control technologies which will allow Newman Unit 6 to meet the stringent emissions performance requirements for simple cycle combustion turbines.[211]

EPE expects to obtain approval of all required environmental permits and cannot begin construction of Newman Unit 6 until the air permits are issued by TCEQ, and operation of the new unit is contingent upon modification of the SOP. Duration of the permitting processes have been accounted for in EPE's overall project schedule.

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[208] *Id* at 8-9 (Bates 10).

[209] *Id* at 7 (Bates 9).

[210] *Id* at 9-10 (Bates 12)

[211] *Id* at 10-11 (Bates 12-13).

Because Newman Unit 6 is an air-cooled simple cycle turbine, the water requirements are significantly less than for the other generating units at the Newman Generating Station. Reuse and recycling within the plant will be maximized, and no off-site disposal of wastewater is anticipated. Fresh water for Newman Unit 6 will come from the existing permitted groundwater wells at Newman Generating Station, owned and operated in conjunction with El Paso Water.[212]

The pollution control technologies, the permitting processes, and EPE's ongoing monitoring and reporting obligations to the TCEQ ensure that granting the Application and approving construction and operation of Newman Unit 6 will not adversely affect the environmental integrity of the area surrounding the existing Newman Generating Station.[213]

e. Effect on Ability of the State to Meet Goal of Adding Renewable Energy Resources Established by PURA § 39.904(a)

Certifying the project will have no effect on the state's ability to meet the goal of adding renewable energy resources.[214]

5. Conclusion Regarding PURA § 37.056 Factors

Weighing the PURA § 37.056 factors—particularly the probability that EPE will need the capacity Newman Unit 6 would provide and the efficacy of Newman Unit 6 in addressing that need as compared to other options—the ALJs find that certification of Newman Unit 6 is necessary for the service, accommodation, convenience or safety of the public.

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[212] *Id.* at 11-12 (Bates 13-14)

[213] *Id* at 11 (Bates 13).

[214] EPE Ex. 3 at 11 (Bates 13) (Schichtl Dir.).

B. Other Issues

1. Satisfaction of Identified Reliability Needs per PURA § 39.452(j)

a. Cost-Effective Reliability Improvement

PURA § 39.452(j) does not apply to EPE. Accordingly, this issue is not considered.

b. WECC Reliability or Costs if Newman 6 Approved

Newman Unit 6 will not give rise to reliability concerns or costs for other members of WECC due to its siting within EPE's service area. Moreover, Newman Unit 6 will not result in congestion charges (to EPE or any other neighboring utility) because WECC does not impose congestion charges.[215]

2. Texas Parks and Wildlife

On November 22, 2019, EPE mailed a complete copy of the application, including the environmental impact assessment, to the Texas Parks and Wildlife Department (TPWD). TPWD did not seek intervention in this docket, nor did it provide EPE with any recommendations for or proposed conditions or limitations to the requested CCN amendment to construct and operate Newman Unit 6.

3. Conditions/Reporting Requirements/Reviews

No party to this case has proposed or recommended any conditions, reporting requirements, or reviews to be imposed should the Commission conditionally grant the Application, and none are warranted.

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[215] EPE Ex 10 at 2 (Bates 4) (Hawkins Supp. Dir.).

4. Seven-Year Limit

EPE and the City agree that an extension of the seven-year conditional approval period specified in the Preliminary Order is presently unnecessary.[216]

V. FINDINGS OF FACT

Procedural History

1. El Paso Electric Company (EPE) is an investor-owned electric utility providing retail electric service in Texas under Certificate of Convenience and Necessity (CCN) No. 30050.

2. On November 22, 2019, EPE filed an application for CCN authorization, under Chapter 37 of the Public Utility Regulatory Act (PURA), to build, own, and operate an approximately 228 megawatt (MW) natural-gas-fired generating unit, Newman Unit 6. The site for the proposed unit is EPE's existing Newman Generating Station, located within EPE's service area in El Paso County and in the City of El Paso.

3. EPE published notice of the application on November 29, 2019, in the *El Paso Times*, a newspaper having general circulation in EPE's Texas jurisdictional service territory. EPE also published notice of the filing in the *Hudspeth Herald* on December 6, 2019, and the *Van Horn Advocate* on November 27, 2019, both newspapers having general circulation in EPE's Texas jurisdictional service territory. The notice was published in both English and Spanish.

4. On November 22, 2019, EPE delivered direct notice of the application to the City of El Paso and the County of El Paso.

5. On November 22, 2019, EPE mailed notice of the application to all parties in EPE's most recent base rate case, *Application of El Paso Electric Company to Change Rates*, Docket No. 46831.

6. On November 22, 2019, EPE mailed a complete copy of the application, including the environmental impact assessment, to the Texas Parks and Wildlife Department (TPWD).

7. There were no directly affected landowners as defined in 16 Texas Administrative Code (TAC) § 22.52(a)(3).

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[216] EPE Initial Br. at 42-43; EPE Ex. 12 at 1-2 (Bates 3-4) (Schichtl Reb.); City Ex. 1 at 12 (Bates 13) (Norwood Dir.).

8. On December 30, 2019, EPE filed proof of notice of this proceeding.

9. The City of El Paso, Texas Industrial Energy Consumers (TIEC), the Office of Public Utility Counsel (OPUC), Sandra Foster, and Hoppy Monk, LLC, were granted intervenor status.

10. Sunrise Movement El Paso and Ryan Brown filed motions to intervene, which were denied by the Commission's Administrative Law Judge (ALJ).

11. TPWD did not seek intervention.

12. On January 8, 2020, the Commission ALJ found the Application and notice sufficient.

13. On January 27, 2020, the Commission referred this matter to the State Office of Administrative Hearings (SOAH).

14. On February 27, 2020, the Commission issued the Preliminary Order identifying the issues to be addressed by SOAH.

15. On March 2, 2020, the SOAH ALJs issued SOAH Order No. 3, setting a procedural schedule.

16. On May 5, 2020, TIEC and OPUC filed statements of position, and the City of El Paso filed the direct testimony of Scott Norwood. Only the City of El Paso opposed the application.

17. On May 12, 2020, Staff filed direct testimony of David Bautista and Reginald Tuvilla. Staff testimony supports the application.

18. On May 19, 2020, EPE filed rebuttal testimony.

19. On May 21, 2020, the SOAH ALJs held a prehearing conference.

20. On May 26, 2020, the SOAH ALJs issued SOAH Order No. 5, dismissing Sandra Foster and Hoppy Monk, LLC as parties based on their failure to file direct testimony or statements of position as required by SOAH Order No. 3.

21. The hearing on the merits was held on June 9, 2020.

22. The record closed on July 7, 2020, with the filing of reply briefs.

Background

23. EPE serves retail customers in New Mexico and in Texas.

24. Retail competition has not been implemented in EPE's service area. As a result, EPE continues to provide bundled, regulated service to its Texas customers.

25. EPE's 2017 and 2019 annual planning process indicated that, based on its load forecasts, expected generating unit retirements, and reserve margin criteria, EPE would need additional capacity with daily cycling ability of approximately 50 MW by 2022 and 320 MW by 2023.

26. To meet this need for additional long-term, cost-effective, and reliable electric resources that would commence operations by EPE's 2022 and 2023 summer peak seasons, EPE issued a Request for Proposals (RFP) in June 2017.

27. EPE retained Wayne Oliver, of the Merrimack Energy Group, Inc., as Independent Evaluator to oversee EPE's RFP process by monitoring the bid evaluation and selection process.

28. In response to its RFP, EPE received 81 proposals from 36 different companies.

29. Of the 81 proposals, 25 were solar-powered, 29 were solar-powered and storage, ten were gas-fired, eight included wind power, and eight were demand-side or used power storage technology.

30. EPE's Generation Projects Group submitted two self-build options.

31. EPE and Mr. Oliver evaluated the bids and determined that the optimal resource plan that met all operational and reliability requirements was a combination of four bids—a solar power purchase agreement, a solar plus storage power purchase agreement, a storage power purchase agreement, and one of EPE's self-build proposals.

32. A third party consultant verified the resources selected.

33. EPE's RFP process was reasonable.

34. The selected EPE self-build proposal consisted of a natural-gas-fired combustion turbine built in simple-cycle configuration at EPE's existing Newman Generating Station, located on approximately 175 acres in the City of El Paso in northeast El Paso County.

35. There are currently five gas-fired generating units operating at the Newman Generating Station. The most recently constructed of these five units—Newman Unit 5—was certified for construction in January 2008 in *Application of El Paso Electric Company for a Certificate of Convenience and Necessity*, Docket No. 34494, Order (Jan. 31, 2008). The first generating unit operating at the Newman Generating Station began commercial operation in 1960.

36. By the end of 2022, EPE plans to retire a combined 196 MW of capacity with Newman Units 1 and 2, which entered service in 1960 and 1963, respectively, and Rio Grande Unit 7, which entered service in 1958.

37. Given these unit retirements, the addition of Newman Unit 6 to EPE's generation fleet will result in a net increase of natural-gas-fired generation of approximately 32 MW.

38. Significant plant and infrastructure already exist within the Newman Generating Station, including natural gas and water pipelines, substations, transmission facilities, wastewater management facilities, above-ground storage tanks, and roads.

39. EPE leases approximately 540 acres of land surrounding the Newman Generating Station as a buffer zone, which extends a minimum of 1,200 feet in each direction. The initial term of the lease ends in 2033, and the lease provides for an automatic 25-year extension.

40. The site of the Newman Generating Station is zoned Light Industrial by the City of El Paso. The adjacent land is mostly undeveloped flat and gently rolling open land zoned as Ranch Farmland, Heavy Manufacturing, and Quarry.

41. A 10 MW solar generating facility contractually operated for EPE is located immediately south/southeast of the Newman Generating Station.

42. The closest single residence to the Newman Generating Station is approximately one-mile north/northeast.

43. Newman Unit 6 is expected to be completed and operational by summer 2023.

44. EPE's recent 2019 and 2020 load forecasts would continue to confirm the need for Newman Unit 6.

Description of Newman Unit 6

45. Newman Unit 6 will consist of a Mitsubishi Hitachi Power Systems Americas G-Series Air-Cooled Model M501GAC Simple Cycle gas turbine that will be fueled by natural gas from two available pipelines already providing natural gas to the Newman Generating Station.

46. Newman Unit 6 will be capable of being started, brought up to full power, and shut down quickly on a daily basis.

47. The International Organization for Standardization (ISO) rating of Newman Unit 6 is 283 MW, and the nameplate rating of the unit is approximately 228 MW based on the location of the Newman Generating Station (higher elevation as opposed to sea level) and the resulting conditions of EPE's summer peak (higher temperatures than ISO site reference conditions).

48. The output from Newman Unit 6 will be delivered directly to the EPE transmission system.

49. Newman Unit 6 will have a starting reliability of 99.05 percent and a forced outage rate of 0.48 percent.

50. Evaporative coolers will be used to cool the combustion turbine–inlet air for maximum operating efficiency.

51. At summer peak load conditions, the guaranteed full load heat rate of Newman Unit 6 is 10,101 British thermal units per kilowatt hour (kWh), with a minimum expected thermal efficiency of 37.4 percent.

52. The unit's ability to provide quick start capability will help EPE meet its Southwest Reserve Sharing Group (SRSG) operating reserve requirement through its non-spin contribution.

53. With Newman Unit 6 in service, in addition to EPE's four quick start units at Montana Power Station and its quick start unit at Rio Grande Generating Station, EPE can guarantee meeting its SRSG non-spinning reserves instead of having to carry those reserves on one of its less efficient and less operationally flexible units or purchase power or reserves on the open market.

54. Newman Unit 6 will operate in a peaking and load following manner similar to EPE's other quick start units, which will assist EPE in responding to the intermittent nature of solar generation, and will be used mostly during EPE's peak hours throughout the year.

55. Newman Unit 6 will be available to provide reliability support to the EPE system during non-peak hours and can be economically dispatched to supplant more expensive generation.

56. Newman Unit 6 can be ramped up or shut down based on load or economic conditions, *i e.* it can be shut down when EPE needs less power or it is more economical to purchase power from the market.

57. Newman Unit 6 is expected to operate at approximately a 35-percent capacity factor.

58. EPE's system will also benefit from the local generation provided by Newman Unit 6 through additional voltage support and additional flexibility in scheduling maintenance outages.

59. There are no residential areas within one half-mile of Newman Unit 6.

60. There are no parks or recreational areas within one half-mile of Newman Unit 6.

61. The operation of Newman Unit 6 will not adversely affect any parks and recreational areas in Texas.

62. Newman Unit 6 will create an incremental amount of noise, unlikely to significantly impact the closest noise receptor, which is located one mile north-northeast of the existing Newman Generating Station property line.

63. The incremental noise produced by the construction and operation of the Newman Unit 6 project is unlikely to stand out given the background noise from the existing development, including roads, in this area.

64. There are no historic places listed on the National Register of Historic Places in Texas within one half mile of Newman Unit 6.

65. Newman Unit 6 will be equipped with emissions technology.

66. The Newman Generating Station is a suitable location for Newman Unit 6. There are no environmental issues that would impact the construction or operation of Newman Unit 6, and there are no anticipated impacts to environmental resources.

67. Newman Unit 6 will outperform the existing units at the Newman Generating Station with respect to certain environmental criteria, most significantly with respect to nitrogen oxide emissions, which will be reduced by nearly 95 percent as compared to Newman Units 1 and 2.

68. Newman Unit 6 will be served by the current water source to the site from El Paso Water.

69. Consumptive water use for Newman Unit 6 will be a fraction of the water used by existing generating units at the Newman Generating Station.

70. Wastewater generation from Newman Unit 6 will be negligible and handled by existing facilities at the Newman Generating Station.

71. Newman Unit 6 falls under the jurisdiction of the Texas Commission on Environmental Quality (TCEQ), and the United States Environmental Protection Agency (EPA) has authority over some of the permitting aspects.

72. The scope of environmental permitting for Newman Unit 6 is a function of the current permits governing the Newman Generating Station. The addition of Newman Unit 6 to the site will require modification or revision of the existing permits, and no significant risks are anticipated in procuring the necessary authorizations.

73. Mandatory compliance with the environmental components of those permits issued by state and federal agencies will help ensure that the environmental integrity of the surrounding area is retained.

74. No other utility will be directly served by or connected to Newman Unit 6 or involved in its construction.

75. The total estimated cash construction cost of Newman Unit 6 is $141.2 million.

76. The estimated amount of allowance for funds used during construction is $16.4 million, for an overall estimated total cost of $157.6 million for Newman Unit 6, excluding any

associated transmission interconnection costs at the Newman Generating Station or other transmission upgrades.

Statutory CCN Factors

Adequacy of Existing Service/Need for Additional Service

77. For reliability reasons, EPE needs the additional resources that Newman Unit 6 will provide, and EPE's system will benefit from the operational features of Newman Unit 6.

78. Through its 2017 RFP process, EPE properly considered and rejected alternatives to Newman Unit 6, which included five or 15-year delays in the retirements of Newman Unit 1 and 2 and Rio Grande Unit 7.

79. The unique nature of solar power causes an inverse relationship between total system resources and capacity-factor rating, such that increasing levels of solar should be treated as making a declining contribution to peak.

80. EPE appropriately assigned a 25-percent capacity factor to its new solar PPAs.

Effect of Granting the Certificate on EPE and Any Electric Utility Serving the Proximate Area

81. There will be a two-fold effect on EPE in granting the certificate for Newman Unit 6—financial and operational.

82. The financial impact on EPE of Newman Unit 6 will be minimal. The construction costs will be financed with cash generated from operations, common stock equity, or debt.

83. The financing will not impair EPE's ability to attract additional capital on reasonable terms and at reasonable prices.

84. Operationally, the effect on EPE of granting the certificate will be positive.

85. Newman Unit 6 will enhance EPE's ability to provide reliable service, since the unit is needed to meet customers' demand and EPE's reserve margin criteria.

86. Newman Unit 6 will contribute to fuel cost savings for EPE because of its efficiency and relatively low heat rate.

87. The operational effect of Newman Unit 6 will also be positive from a system and transmission perspective. The addition of local generation from Newman Unit 6 will provide EPE with flexibility in scheduling maintenance outages and voltage support in its local system.

88. Newman Unit 6 will not be located in the certificated service area of any other utility.

89. Newman Unit 6 will not impair the operation of nearby utilities, and there will be no adverse effects on any other electric utility.

Community Values

90. Newman Unit 6 will be located on an existing generation station site.

91. Newman Unit 6 will be located approximately one mile from the nearest residential structure.

92. Existing development in the area will be minimally affected by the addition of Newman Unit 6.

93. The effect on community values will be minimal.

Recreational and Park Areas

94. Because there are no recreational or park areas within one mile of Newman Unit 6 and because it will be constructed at an existing plant site, there will be no adverse effect on any recreational or park areas.

Historical and Aesthetic Values

95. No areas listed or recommended for listing on the National Register of Historic places in Texas are located in proximity to Newman Unit 6.

96. Any effect on historical or aesthetic values will be minimal.

Environmental Integrity

97. Newman Unit 6 is expected to have a minimal impact on the environmental integrity of the area.

98. Modification or revisions to the various types of existing environmental permits for the Newman Generating Station, including air quality permits, must be obtained from the TCEQ or EPA for Newman Unit 6.

99. The environmental permitting regime, to which the Newman Generating Station already is subject, along with EPE's compliance with those permits, will help ensure the environmental integrity of the surrounding area.

100. EPE will obtain water from El Paso Water for Newman Unit 6 based on current water use agreements with El Paso Water for the Newman Generating Station.

Probable Improvement of Service or Lowering of Cost to Consumers in Area

101. The capacity that will be provided by Newman Unit 6 will improve electric service because of the reliability and operational flexibility the unit will add to EPE's system and its contribution to meeting EPE's reserve margin needs.

102. EPE's transmission system will benefit from the capability of Newman Unit 6 to be started to provide voltage support during normal conditions or during transmission outages.

103. Based on a PROMOD operating simulation intended to calculate the impact of Newman Unit 6 on annual fuel costs, such costs are expected to decline approximately $4.3 million in 2024, the first full year of operation for Newman Unit 6.

104. EPE predicts that the net impact on monthly rates of Newman Unit 6, including both base rates and fuel, would be $1.45, or a 1.85 percent increase in rates for an average Texas residential customer using 642 kWh per month, for the first full year of operation.

Whether CCN Is Necessary for Service, Accommodation, Convenience, or Safety of the Public under PURA § 37.056

105. Certification of Newman Unit 6 is necessary for the service, accommodation, convenience or safety of the public.

Effect of CCN on Implementation of Customer Choice

106. Customer choice has been delayed in EPE's Texas service area, so there is no impact on customer choice.

107. Under PURA § 39.553 and 16 TAC § 25.421, the timeline for implementation of retail competition in EPE's service territory is dependent upon completion of a five-stage process, the first of which is development, approval, and operation of a regional transmission organization (RTO) for the EPE region.

108. No plan is in place to form, or request Federal Energy Regulatory Commission approval of, an RTO, and EPE cannot unilaterally form an RTO.

109. Approval of an amendment to EPE's CCN for the construction, ownership, and operation of Newman Unit 6 will not affect the development of an RTO in which EPE could participate.

110. The approval of this CCN amendment will also not affect any subsequent move toward full retail competition in EPE's service area.

VI. CONCLUSIONS OF LAW

1. EPE is an electric utility as defined in PURA § 31.002(6).

2. The Commission has jurisdiction over the application pursuant to PURA §§ 14.001, 14.002, 37.051, 37.053, and 37.056.

3. The SOAH has jurisdiction over this proceeding, including the preparation of the proposal for decision with findings of fact and conclusions of law, pursuant to PURA § 14.053 and Tex. Gov't Code §§ 2001.058 and 2003.049.

4. Notice of the application was provided in compliance with PURA § 37.054 and 16 TAC § 22.52(a).

5. This docket was processed in accordance with the requirements of PURA, the Administrative Procedure Act, Texas Government Code Chapter 2001, and Commission rules.

6. EPE is entitled to approval of the application described above, having demonstrated that certification of Newman Unit 6 is necessary for the service, accommodation, convenience or safety of the public within the meaning of PURA § 37.056(a), taking into consideration the factors set out in PURA § 37.056(c).

VII. PROPOSED ORDERING PARAGRAPHS

1. EPE is certified to construct, own, and operate Newman Unit 6, an approximate 228 MW natural-gas-fired power generation unit to be located at the existing Newman Generating Station in northeast El Paso.

2. The rate recovery of the costs of Newman Unit 6 was not considered and is not determined in this docket.

3. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED September 3, 2020.

CHRISTIAAN SIANO
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

ROBERT H. PEMBERTON
ADMINISTRATIVE LAW JUDGE
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SERVICE LIST

AGENCY: Public Utility Commission of Texas (PUC)

STYLE/CASE: APPLICATION OF EL PASO ELECTRIC COMPANY

SOAH DOCKET NUMBER: 473-20-2278

REFERRING AGENCY CASE: 50277

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